A

ATTORNEY GENERAL OF MALAYSIA v. MOHD KASSIM MOHD HAMID (NO 2)

HIGH COURT MALAYA, SHAH ALAM
MEOR HASHIMI ABDUL HAMID JC
[CRIMINAL APPEAL NO: BA-42(ORS)(A)-1-09-2019]
15 MARCH 2020

B

CRIMINAL PROCEDURE: *Appeal – Appeal against coroner's decision – Appeal by Public Prosecutor – Public Prosecutor directed inquest into death – Allegations that Public Prosecutor made premature decision regarding deceased's death and delayed and disrupted continuity and transparency of inquest – Leave for committal proceedings against Public Prosecutor granted by coroner – Whether coroner seized with jurisdiction to punish for contempt – Whether procedural requirements for leave under O. 52 r. 3 of Rules of Court 2012 strictly adhered to*

C

CRIMINAL PROCEDURE: *Jurisdiction – Coroner – Public Prosecutor directed inquest into death – Allegations that Public Prosecutor made premature decision regarding deceased's death and delayed and disrupted continuity and transparency of inquest – Leave for committal proceedings against Public Prosecutor granted by coroner – Whether coroner seized with jurisdiction to punish for contempt – Subordinate Courts Act 1948*

D

E

The appellant, in his capacity as the Public Prosecutor, directed an inquest into the death of Muhammad Adib Mohd Kassim ('deceased'), the firefighter who succumbed to his injuries during the riot at the Seafield Sri Mariaman Temple. The inquest proceeded before the coroner, with the presence of the representatives from the Ministry of Housing and Local Government, the Fire and Rescue Services Department and the deceased's family ('interested parties'). One Syazlin Mansor ('Syazlin') was appointed as counsel to hold watching brief on behalf of the interested parties. A pathologist was scheduled to give his evidence at the inquest but, on the said day, Syazlin withdrew from representing the interested parties and informed the coroner that the pathologist would not continue to give his evidence. The inquest then came to a halt and to clarify matters related to Syazlin's withdrawal, the appellant issued a media release where he said, *inter alia*, '... my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that Pn Syazlin Mansor takes an active part in the inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer' ('paragraph in the media release'). The media release prompted the deceased's father ('respondent') to file an *ex parte* application for leave to issue committal proceedings against the appellant, pursuant to O. 52 r. 3 of the Rules of Court 2012 ('ROC') ('encl. 62'). According to the respondent, (i) the paragraph in the media release, read together with the averment in the DPP's affidavit, meant that the appellant had made a premature decision regarding the deceased's death; and (ii) the appellant had delayed and disrupted the

F

G

H

I

continuity and transparency of the inquest and this tantamount to an interference with the cause of justice. The coroner heard encl. 62 and granted the application ('coroner's decision'). Hence, the present appeal by the appellant against the coroner's decision. The issues that arose for adjudication were (i) whether the coroner was seized with the jurisdiction to punish for contempt; and (ii) whether the procedural requirements for leave under O. 52 r. 3 of the ROC were strictly adhered to.

Held (allowing appeal):

(1) Paragraph 26 of the Third Schedule to the Subordinate Courts Act 1948 ('SCA') is clear and unambiguous. The coroner has the power to take cognisance of any contempt of court, be it in the face of court or not in the face of the court, and to award punishment for the same as provided in the said provisions. However, the jurisdiction of the inferior courts, which includes the coroner's court, is only limited to the punishments for any contempt prescribed in para. 26 of the Third Schedule to the SCA. (paras 43 & 46)

(2) Whilst O. 52 r. 3 of the ROC provides that an application must be made *ex parte*, the court still retains the discretion to order that the matter be heard *inter parte* with the necessary directions if the circumstances so warrant and this discretion must, no doubt, be exercised judiciously. Enclosure 62 was heard on an opposed *ex parte* basis. Since the parties were already before the coroner for the ongoing inquest proceedings, the application ought to have been treated as *inter parte* instead. The coroner misdirected herself and this misdirection had seriously prejudiced and caused unfairness to the appellant. (paras 57, 61 & 62)

(3) The coroner misdirected herself by omitting to consider the affidavits by the appellant and the DPP which not only explained the facts of the matter but also the actions taken by the appellant and the DPP in handling the matter. The coroner ought to have given due consideration to all relevant facts particularly the responses of the appellant and the DPP whose affidavits were cited by the respondent. This was more so when the affidavits of the respondent did not disclose the possible response of the appellant to the leave application. Furthermore, the coroner omitted to consider the whole contents of the media release. The respondent too failed to draw the attention of the coroner to the media release in its entirety to be fully-considered by the coroner. (paras 53, 54 & 60)

(4) The respondent had not revealed or disclosed all material facts in the statement, especially facts that were favourable to the appellant or likely to be raised by the appellant or potential arguments against the granting of such leave. All relevant facts must be presented before the coroner. The disclosure was important for the coroner to make a fair and just decision on the leave application. (paras 71 & 72)

(5) The respondent/applicant in this case was Mohd Kassim Abdul Hamid. However, the affidavits verifying the facts were instead affirmed by Mohd Asraf Mohd Kassim ('Mohd Asraf'). The reason being the respondent was away overseas. The coroner should not have considered the affidavits verifying the facts affirmed by Mohd Asraf. Since Mohd Asraf was not the applicant, he had no *locus* and personal knowledge of the matter and was not in the proper position to verify the facts in the statement of the respondent. The omission by the respondent to verify the statement himself amounted to an act of non-compliance of the procedural requirement stipulated in O. 52 r. 3(2) of the ROC. (paras 65-66 & 70)

(6) The coroner had considered (i) matters beyond the ambit of the statement and the affidavits verifying the facts; and (ii) unverified media reports which were neither raised nor exhibited in the statement and the affidavits verifying the facts that there was a call to establish a Royal Commission of Inquiry to replace the inquest. The alleged act of contempt must be adequately described and particularised in detail in the statement itself. The accompanying affidavits were only to verify the facts relied in the statement, it could not add facts to it. (paras 85 & 87)

(7) There was no *prima facie* act of contempt against the appellant as decided by the coroner. Neither was there any act on the part of the appellant in scandalising the inquest as perceived by the coroner. As such, the coroner had exercised her discretion wrongly and erred in granting the leave to the respondent. The leave granted was unsubstantiated, devoid of any merit and was, therefore, set aside. (paras 103, 111 & 113)

Case(s) referred to:

Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Balogh v. St Albans Crown Court [1975] QB 73 ***(refd)***
Bok Chek Thou & Anor v. Low Swee Boon & Anor [1998] 5 CLJ 86 HC ***(refd)***
Dewan Perniagaan Melayu Malaysia Negeri Johor v. Menteri Besar Johor & Ors [2016] 1 CLJ 52 HC ***(refd)***
In re Pollard [1868] LR 2 PC 106 ***(refd)***
Jaginder Singh & Ors v. The Attorney General [1983] 1 CLJ 69; [1983] CLJ (Rep) 176 FC ***(refd)***
Karam Singh v. PP [1974] 1 LNS 60 HC ***(refd)***
Koperasi Serbaguna Taiping Barat Bhd v. Lim Joo Thong [1998] 1 LNS 366 HC ***(refd)***
Maharaj v. Attorney-General for Trinidad and Tobago [1977] 1 All ER 411 ***(refd)***
Mukhriz Mahathir v. Datuk Seri Mohd Najib Tun Hj Abdul Razak & Anor [2018] 6 CLJ 573 CA ***(refd)***
PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 6 CLJ 1 FC ***(refd)***
PP v. Seeralan [1985] 1 CLJ 524; [1985] CLJ (Rep) 250 SC ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***
Re Derek Selby, Deceased [1971] 1 LNS 122 HC ***(refd)***
Re HE Kingdom v. SC Goho [1947] 1 LNS 87 HC ***(refd)***

Re Kumaraendran, An Advocate & Solicitor [1975] 1 LNS 152 HC ***(refd)***
Tan Kang Ho v. Mao Sheng Marketing (M) Sdn Bhd & Ors [2015] 4 CLJ 113 HC ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Tan Sri G Darshan Singh v. Tetuan Azam Lim & Pang [2013] 1 CLJ 1060 CA ***(refd)***
Teoh Meng Kee v. PP [2014] 7 CLJ 1034 CA ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***
Zainur Zakaria v. PP [2001] 3 CLJ 673 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 13
Criminal Procedure Code, ss. 2, 6, 328, 335(1), 337, 339
Federal Constitution, art. 126
Rules of Court 2012, O. 52 rr. 1, 3(2)
Rules of the Federal Court 1995, r. 3
Rules of the High Court 1980, O. 52 r. 2(2)
Subordinate Courts Act 1948, s. 99A, Third Schedule paras 9, 26

Other source(s) referred to:
Bindra's Interpretation of Statutes, p 395
Dr Mallal, *Criminal Procedure*, 4th edn, p 485
Malaysian Civil Procedure 2018, vol 1, pp 717, 723

For the appellant - Ambiga Sreenevasan, Zainur Zakaria, Narkunavathy Sundareson, Mankiranjit Kaur Mehinder Singh & Sarah Ho; DPPs
For the respondent/applicant - Mohamed Haniff Khatri Abdulla, Aidil Khalid & Abdul Rahim Sinwan; M/s Mohd Zubir Embong & Assocs

Reported by Najib Tamby

JUDGMENT

Meor Hashimi Abdul Hamid JC:

Background Facts

[1] The appeal by the Attorney General (appellant) was heard on 24 December 2019 and the decision of this court was delivered on 28 January 2020. On the said date, this court gave a summary of its decision and now delivers its full decision.

[2] The respondent/applicant is presently appealing to the Court of Appeal on the decision of this court.

[3] The background facts in brief are as follows:

(i) The appellant in his capacity as the Public Prosecutor under s. 339 of the Criminal Procedure Code (CPC), in or about December 2018, directed an inquest to be conducted into the death of Muhammad Adib bin Mohd Kassim (deceased), a firefighter who was gravely injured during the riot at the Seafield Sri Mariamman Temple on 27 November 2018 and passed away on 17 December 2018.

(ii) The inquest was conducted by a Sessions Court Judge (the learned coroner) and during the course of the inquest, on application by the respondent/applicant, the learned coroner granted leave to respondent/applicant to initiate committal proceedings against the appellant. The decision of the learned coroner dated 27 August 2019 can be seen at pp. 28-41 of the record of appeal vol. 1 [ROA Vol. 1].

(iii) The function of a Magistrate or Sessions Court Judge sitting as a coroner in an inquest (inquiry) under Chapter XXXII of the CPC is to enquire, when, where, how, and in what manner the deceased came by his death and also whether any person is criminally concerned in the cause of death of the deceased as provided for under s. 337 of the CPC.

(iv) The cause of death as defined under s. 328 of the CPC includes not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by an unlawful act or omission on the part of any other person (see *Teoh Meng Kee v. PP* [2014] 7 CLJ 1034; [2014] 5 MLJ 741 and Practice Direction No. 2 of 2019 - Arahan Amalan Bil 2 Tahun 2019: Pengendalian Laporan Mati Mengejut Dan Siasatan Kematian Oleh Mahkamah Sesyen Koroner).

(v) In the instant case, the said inquest proceeded before the learned coroner with the presence of representatives from the Ministry of Housing and Local Government, the Fire and Rescue Services Department and the deceased's family whom all were acknowledged as interested parties and therefore allowed to hold watching brief in the inquest proceedings. The said inquest was also assisted by a Deputy Public Prosecutor (DPP) from the Attorney General's Chambers (AGC) who acted as the conducting/assisting officer.

(vi) The learned coroner however rejected the application by the Seafield Mariamman Temple Task Force (Task Force) to be made a party to the inquest proceedings which they subsequently appealed to the Court of Appeal.

(vii) The Task Force's appeal and their application to stay of proceeding of the inquest was fixed for hearing before the Court of Appeal on 15 April 2019. The learned DPP (Hamdan Hamzah) who was conducting/assisting the inquest affirmed an affidavit dated 3 April 2019 (DPP's affidavit) where he stated therein *inter alia* that the deceased's death was not due to assault by any person. This resulted in the Task Force withdrawing their appeal and subsequently all related proceedings in the Court of Appeal were struck out.

(viii) The said inquest thereafter commenced on 11 February 2019 and proceeded with the calling of witnesses by the conducting officer. Apart from the conducting officer, an advocate and solicitor by the name of Syazlin Mansor was appointed as counsel to hold watching brief on behalf of all the three interested parties in the inquest ie, the Ministry, the Fire and Rescue Department and the deceased's family.

(ix) One of the witnesses at the inquest was Professor Dr Shahrom bin Abdul Majid (SI 29), an independent pathologist who was scheduled to give his evidence at the inquest on 27 May 2019.

(x) However what transpired on the said 27 May 2019 was, Syazlin Mansor abruptly applied to withdraw from representing the Ministry, the Fire and Rescue Department and the deceased's family and further informed the learned coroner that Prof Shahrom would not continue to give his evidence.

(xi) As a result of Syazlin Mansor's withdrawal, the inquest came to a halt and a case management was fixed on 26 June 2019 to address the issues of parties' representations at the inquest and the continued process of Prof. Shahrom's giving his evidence at the inquest.

(xii) Syazlin Mansor's abrupt withdrawal caused confusion and raised inevitable speculation as this also resulted in her withdrawing from representing the deceased's family.

(xiii) Subsequently, the appellant issued a media release dated 28 May 2019 to clarify matters related to the said withdrawal (see pp. 14-16 of the ROA Vol. 3). The contents of the appellant's media release dated 28 May 2019 can be seen below in *verbatim* as follows:

MEDIA RELEASE
RE: INQUEST PROCEEDINGS

This is to clarify the confusion and speculation following the withdrawal of Pn. Syazlin Mansor, a member of the Malaysian Bar, from further representing the Housing and Local Government Ministry ("Housing Ministry") and the Fire and Rescue Department ("Fire Department") in the inquest into the death of fireman, the late Muhammad Adib Mohd Kassim ("Adib") before the Coroner, Judge Rofiah Mohamad at the Shah Alam Sessions Court ("Inquest").

Pn. Syazlin accepted the appointment to represent the Housing Ministry and the Fire Department in the inquest proceedings when she was appointed to act on behalf of estate of the deceased (the late Adib). She ought to have declined the government appointment for various reasons.

A First, the Housing Ministry and the Fire Department, like all other ministries and government departments, are required to seek legal advice from this Chambers, with external counsel being appointed by the Attorney General/Public Prosecutor.

Secondly, Pn Syazlin was in a conflict of interest position when she
B agreed to act for the Housing Ministry and the Fire Department as she was also acting for the deceased's family, who have a direct interest in the Inquest. The interests of these parties may conflict, and it is unacceptable for her to act for all 3 parties.

Thirdly, my officers, who are performing their traditional role as
C counsel assisting the Coroner, have informed me that Pn. Syazlin takes an active part in the Inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer.

Fourthly, Pn. Syazlin's husband is employed as Press Secretary to
D the Housing Minister. It is for these reasons that I requested that the Housing Ministry to immediately revoke her appointment from further representing the Ministry and the Fire Department.

I was shocked to discover through yesterday's news report that Pn. Syazlin also withdrew from also acting for the deceased's family. That decision was voluntary made by her, without any influence
E from Chambers.

Finally, I must add that before the Inquest proceedings started yesterday, DPP Faten Hadni binti Khairuddin, one of the conducting officers assisting the Coroner in the Inquest, personally spoke with Pn. Syazlin and informed her that this Chambers has
F no issue with her continuing to represent the deceased's family. DPP Faten requested Pn. Syazlin to continue to represent the deceased's family so that the Inquest proceedings could proceed and Prof. Dr. Shahrom Abd. Wahid could be called to further testify. Pn. Syazlin was however firm on her decision to withdraw.

Prof. Shahrom is an expert witness assisting the Coroner in the
G Inquest. His role in the Inquest is not affected by Pn. Syazlin's withdrawal as counsel. DPP Faten informed the Coroner that Chambers is prepared to assist the Coroner by subpoenaing Prof. Shahrom. We will do so.

TOMMY THOMAS
H ATTORNEY GENERAL
28th May 2019

Application For Leave To Issue Committal Proceedings

[4] In the course of the inquest, the respondent/applicant filed an *ex parte*
I application for leave to issue committal proceedings against the appellant (encl. 62) under O. 52 r. 3 of the Rules of Court 2012 ('ROC 2012'). The application was prompted by the appellant's media release dated 28 May 2019 wherein the appellant, among others, had said:

> Thirdly, my officers, who are performing their traditional role as counsel assisting the learned coroner, have informed me that Pn Syazlin Mansor takes an active part in the inquest, often contradicting the positions our DPPs have taken, thus causing embarrassment in her capacity as the Ministry's lawyer.

[5] The respondent/applicant alleged that the said paragraph in the appellant's media release dated 28 May 2019, read together with the averment in DPP Hamdan's affidavit dated 3 April 2019 (see pp. 93-96 of the ROA Vol. 3), meant that the appellant had made a premature decision regarding the deceased's death.

[6] Further, the respondent/applicant contended that the appellant had delayed and disrupted the continuity and the transparency of the inquest and this tantamount to an interference with the course of justice and therefore form the basis of the application for leave to initiate committal proceedings against the appellant.

[7] The learned coroner heard the said application by the respondent/applicant as an opposed *ex parte* and on 27 August 2019, granted the respondent/applicant's leave to issue committal proceedings against the appellant pursuant to O. 52 r. 3(2) of the ROC 2012.

Appeal By The Appellant

[8] The appeal by the appellant is pursuant to the leave granted by the learned coroner to the respondent/applicant on 27 August 2019 under O. 52 r. 3(2) of the ROC 2012 allowing the respondent/applicant to initiate committal proceedings against the appellant.

[9] The appellant contended that there was no *prima facie* case of contempt and that the said leave ought not be granted by the learned coroner. Therefore it is incumbent upon this court to determine whether the leave granted by the learned coroner is justified and whether the procedural requirements under O. 52 r. 3(2) of the ROC 2012 have been strictly complied with before granting such leave.

[10] Order 52 r. 3(2) of the ROC 2012 provides as follows:

> 3(1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.
>
> (2) An application for such leave must be made *ex parte* to the Court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

[11] This court is of the view that the procedural requirements in an application for committal proceedings must be strictly adhered to by the respondent/applicant. As a general rule, the procedural requirements in an application for an order of committal must be strictly adhered to given the *quasi*-criminal nature of the application. The statement is very important as it is akin to a charge sheet against an accused (alleged contemnor) in a criminal proceeding and the applicant must adequately describe and particularise the alleged act of contempt in the statement.

[12] Further, the alleged contemnor must know clearly what is being alleged against him and must have every opportunity to answer each of the allegations. The statement must contain sufficient information or particulars of the alleged contempt. In this respect, this court opines that the applicant must prove beyond reasonable doubt that the procedural requirements have been complied with (see *Malaysian Civil Procedure* 2018, vol. 1, p. 723).

[13] Where this aforesaid aspect is concerned, this court refers to the case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458. In the said case, the Federal Court gave leave to the applicants to commence committal proceedings against the respondents. The leave was granted pursuant to O. 52 r. 2(2) of the Rules of the High Court 1980 read together with r. 3 of the Rules of the Federal Court 1995. The first respondent was alleged to have committed contempt in making the false statement in his affidavit in opposition. The second respondent, who acted as counsel for the first respondent, was alleged to have committed contempt for aiding and abetting the first respondent. While the third, fourth and fifth respondents were alleged to be similarly liable as partners of the firm.

[14] In the said case, before the committal proceedings was set down for hearing, the respondents made an application to set aside the leave granted to the applicants. The Federal Court having heard the parties, allowed the respondents' application and set aside the said leave where Arifin Zakaria CJ at pp. 858 & 859 (CLJ), pp. 467-469 (MLJ) made these observations:

> [20] In dealing with the application to set aside the leave for committal proceedings, it is necessary for us to consider the law of contempt. A good starting point would be the definition of contempt of court itself. *Oswald's Contempt of Court* (3rd Ed), at p. 6 gives a general definition of contempt of court as follows:
>
> > *To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation.*
>
> ...

[22] Hence, the power to punish a contempt is not derived merely from statute nor truly from common law but instead flows from the very concept of a court of law (see *Borrie & Lowe's The Law of Contempt* (3rd Rd), at p. 465; and *Master Jacob* (1970) 23 Current Legal Problems 23).

[23] *Article 126 of the Federal Constitution empowers the Federal Court, the Court of Appeal and the High Courts to punish any contempt of itself. This is repeated in s. 13 of the Courts of Judicature Act 1964. However since the RFC has no procedural provisions on committal, therefore, by virtue of r. 3 of the RFC, the procedure under O. 52 of the RHC may be adopted. Thus, an applicant can bring contempt proceedings via O. 52 of the RHC without having to go through the Criminal Procedure Code or the Penal Code even if the relief sought is imprisonment*.

[24] Contempt of court has traditionally been classified as being either criminal or civil. In England, the general approach has been that a criminal contempt is an act which so threatens the administration of justice that requires punishment whereas by contrast, a civil contempt involves disobedience of a court order. However, O. 52 of the RHC is inapplicable for contempt in criminal proceedings where the contempt is in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court (see O. 52 r. 1(2)(a)(ii) of the RHC). *One thing is clear, be it civil or criminal contempt, the standard of proof required in either type is the same, which is beyond reasonable doubt*.

…..

[28] Hence, the law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order. It was reported in *Attorney General v. Times Newspaper Ltd* [1973] 3 All ER 54 that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made.

[29] *It is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance*. In this regard, Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 had this to say:

> *Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations.*
>
> ...
>
> When, however, one passes away from safeguards which are laid down in the interests of the contemnor and comes to consider mere verbal deficiencies in the documents in question – cases where the documents do not comply strictly with the rules, but it is impossible that in any conceivable case the contemnor could be

A

> in any way prejudiced by the defects – then it seems to me that there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would be in any other proceeding.

[30] In similar tone, Lord Denning MR in *Mcllraith v. Grady* [1968] 1 QB
B 468 said at p 477:

> The second appeal is as to the committal order. **Here we must remember the fundamental principle that no man's liberty is to be taken away unless every requirement of the law has been strictly complied with**.

C (emphasis added)

[15] In addition on the importance of the procedural safeguards, this court has referred to the Federal Court's case of *Jaginder Singh & Ors v. The Attorney General* [1983] 1 CLJ 69; [1983] CLJ (Rep) 176; [1983] 1 MLJ 71 which had considered the cases of *Karam Singh v. PP* [1974] 1 LNS 60; [1975] 1 MLJ
D 229 and *Re Kumaraendran, An Advocate & Solicitor* [1975] 1 LNS 152; [1975] 2 MLJ 45 and decided that the summary contempt procedure not only should be employed most sparingly but should rarely be resorted to except in those exceptional cases where it is urgent and imperative to act immediately to preserve the integrity of the trial in progress or about to
E commence.

[16] It is also worth to note that Raja Azlan Shah Ag LP (as His Majesty then was) whilst presiding in *Jaginder Singh*'s case has agreed with the principle decided by the Privy Council *In re Pollard* [1868] LR 2 PC 106 where it was stated that no person should be punished for contempt of court,
F which is a criminal offence, unless the specific charge against him be distinctly stated and opportunity of answering it be given to him. Further, the care with which the power to punish summarily for contempt of court is to be exercised has been repeatedly stressed by the courts and this principle was reiterated in *Maharaj v. Attorney-General for Trinidad and Tobago* [1977]
G 1 All ER 411.

[17] On similar tone, Brown J in *Re HE Kingdom v. SC Goho* [1947] 1 LNS 87; [1948] MLJ 17 has stated as follows:

> But the root principle on which the inherent power to punish for contempt is founded, and the purpose for which it must be exercised, is not to
H vindicate the dignity of the individual judge or other judicial officer of a court or even of the court itself, **but to prevent an undue interference with the administration of justice in the public interest**.

(emphasis added)

I

The Issues

[18] In determining this appeal, the following issues have been considered by this court:

(i) the jurisdiction of the learned coroner to punish for contempt; and

(ii) whether the procedural requirements for the application for leave under O. 52 r. 3 of the ROC 2012 were strictly adhered to.

[19] On the procedural requirements for application for leave under O. 52 r. 3 of the ROC 2012, this court has deliberated on the followings:

(i) whether the learned coroner's omission to consider the affidavit of the appellant dated 19 July 2019 and Hamdan bin Hamzah's affidavit dated 22 July 2019 (the learned DPP's affidavit) was a misdirection;

(ii) whether the affidavit verifying the facts dated 15 July 2019 and additional affidavit dated 24 July 2019 under O. 52 r. 3(2) ROC 2012 affirmed by Mohd Asraf bin Mohd Kassim ought not be considered as he is not the respondent/applicant;

(iii) whether there exists non-disclosure of the material facts by the respondent/applicant with regards to the statement dated 15 July 2019 made by the respondent/applicant under O. 52 r. 3(2) ROC 2012;

(iv) whether the learned coroner had erroneously considered facts and circumstances beyond the ambit of the submitted statement of the respondent/applicant;

(v) whether the learned coroner has exercised her discretion judiciously in granting the said leave;

(vi) whether a *prima facie* act of contempt was committed by the appellant pursuant to his media release dated 28 May 2019 and Hamdan Hamzah's affidavit dated 3 April 2019; and

(vii) what should be the determinant when evaluating the standard of proof in granting leave in criminal contempt; whether it ought to be on the balance of probabilities (lower burden) or beyond reasonable doubt (higher burden).

Jurisdiction Of The Coroner To Punish For Contempt

[20] This court has allowed the oral application by learned counsel for the appellant to amend the appellant's petition of appeal to include the issue on the jurisdiction of the learned coroner to punish for contempt as an additional ground of appeal.

[21] On the jurisdiction of the learned coroner, learned counsel for the appellant submitted that the learned coroner has no jurisdiction to punish for contempt or alternatively, if this court holds that such a jurisdiction exists, then it is limited in the face of the court.

[22] Learned counsel for the appellant also submitted that a Magistrate or Sessions Court Judge holding an inquiry under Chapter XXXII of the CPC is not a 'court' since ss. 2 and 6 of the CPC clearly makes a distinction between a 'court' and an 'inquiry'.

[23] Learned counsel further submitted that the term 'coroner' is not used or referred to in the CPC and that the inquiry under Chapter XXXII of the CPC does not fall within the meaning of 'courts' under s. 2 or s. 6 of the CPC. Whilst s. 335(1) of the CPC provides that a 'Magistrate holding an inquiry under this Chapter shall have all the powers which he would have in holding an inquiry into an offence', these powers do not extend to all the additional powers set out in the Third Schedule to the Subordinate Courts Act 1948 including the power to commit for contempt.

[24] It was also submitted by learned counsel for the appellant that a coroner's inquiry is not a 'court' within the CPC and that not all the powers and jurisdiction conferred upon subordinate courts under the CPC are extended to the coroner's inquiry and such a power must be specifically provided for.

[25] Further and alternatively, learned counsel for the appellant submitted that even if a coroner has the power to punish for contempt, this power is limited to contempt in the face of court. Reference was made to the Malaysian Civil Procedure 2018 Vol.1 on the scope of O. 52 r. 1 of the Rules of Court 2012 at p. 717 which describes that "both the Federal Constitution, art. 126 and the Courts of Judicature Act 1964 (Act 91), s. 13 provides that the Federal Court, the Court of Appeal and the High Court shall have power to punish any contempt of itself. However, for the Sessions Court and Magistrate's Court, the power to punish for contempt is limited. Their power is dealt with in the Subordinate Courts Act 1948 (Act 92), Schedule 3 paras. 9 and 26".

[26] In reference to *Balogh v. St Albans Crown Court* [1975] QB 73, *Re Kumaraendran, An Advocate & Solicitor* [1975] 1 LNS 152; [1975] 2 MLJ 45 and *Koperasi Serbaguna Taiping Barat Bhd v. Lim Joo Thong* [1998] 1 LNS 366; [1999] 6 MLJ 38, learned counsel for the appellant submitted that the power to punish for contempt in respect of subordinate courts are limited to power to take cognisance of any contempt of court as provided in para. 26 of the Third Schedule. As such, the word 'cognisance' would restrict it to contempt in the face of the court. This clearly differs from the powers conferred on the superior courts under the Federal Constitution and the Courts of Judicature Act 1964 where superior courts have power to punish any contempt of itself.

[27] Learned counsel for the appellant went on to submit that the learned coroner did not have the jurisdiction to grant leave to the respondent/applicant to issue committal proceedings against the appellant. Even if the learned coroner had jurisdiction, it would be restricted to acts which constitute contempt in the face of the court. The purported contempt forming the basis of the respondent/applicant's complaint is not contempt in the face of the court.

[28] On the other hand, learned counsel for the respondent/applicant in referring to s. 99A of the Subordinate Courts Act 1948, the cases of *Bok Chek Thou & Anor v. Low Swee Boon & Anor* [1998] 5 CLJ 86; [1998] 4 MLJ 342 and *Koperasi Serbaguna Taiping v. Lim Joo Thong* [1998] 1 LNS 366; [1996] 6 MLJ 38 had submitted that the learned coroner or any subordinate court have the power to issue contempt, be it a contempt in the face of court or not in the face of the court.

[29] Learned counsel further contended that the learned coroner or any subordinate court for the matter have the further power and jurisdiction to issue contempt, without derogating from their original power conferred upon them. The powers and jurisdiction is not limited to only contempt in the face of the court but also extend to contempt not in the face of the court.

[30] Learned counsel for the respondent/applicant submitted that the act of the appellant is a contempt in the face of court. The learned coroner or any subordinate court have the power and jurisdiction to issue contempt against the alleged contemnor because the power and jurisdiction is not limited to only contempt in the face of court and that such contempt had interfered with the administration of justice or may impede the fair trial of the matter.

[31] Learned counsel for the respondent/applicant submitted that a 'coroner' is a court and indeed an inferior court or subordinate court. Hence, the power and jurisdiction conferred upon subordinate courts extend to coroner as well, to which this court agrees forthwith that the learned coroner has the jurisdiction to punish for any contempt, be it in the face or not in the face of the court.

[32] Having heard the parties, this court is of the view that the learned coroner conducting the said inquest is indeed a court of law with all the necessary powers thereof. Such powers are derived from the provisions of s. 99A of the Subordinate Courts Act 1948 [Act 92] read together with para. 26 of the Third Schedule of the same Act which provides "the power to take cognisance of any contempt of court and to award punishment for the same".

[33] This court's view is made by referring to s. 99A of Act 92 that provides:

> Further powers and jurisdiction of courts
>
> In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrate's Court shall have the further powers and jurisdiction as set out in the Third Schedule.

[34] In addition, para. 26 of the Third Schedule of Act 92 states as follows:

> Contempt of court
>
> Power to take cognizance of any contempt of court and to award punishment for the same, not exceeding, in the case of a Sessions Court, a fine of three hundred ringgit or imprisonment for six weeks, in the case of a Magistrate's Court presided over by a First Class Magistrate, a fine of one hundred and fifty ringgit or imprisonment for three weeks, and in the case of a Magistrate's Court presided over by a Second Class Magistrate, a fine of fifty ringgit or imprisonment for one week, to such extent and in such manner as may be prescribed by rules of court. If the contempt of court is punishable as an offence under the Penal Code, the court may, *in lieu* of taking cognizance thereof, authorise a prosecution.

[35] In *Re Derek Selby, Deceased* [1971] 1 LNS 122; [1971] 2 MLJ 277, Sharma J (as he then was) at p. 279 quoted Dr Mallal in his *Criminal Procedure*, 4th edn, at p. 485 which says:

> *A coroner's inquest is a court of law although no person is accused before him.* The coroner examines witnesses on oath and while usually following the ordinary rules of evidence he may admit any evidence which he thinks fit, especially hearsay evidence. His duty is to ascertain the cause of death and he is not bound to follow the usual procedure of law courts. He may exclude the public from court if he considers it desirable in the interests of justice or decency.
>
> *Again at page 500 of Mallal's Criminal Procedure it is stated that a coroner's court is an inferior court of record.*
>
> *The Courts of Judicature Act 1964 defines a 'subordinate court' as 'any inferior court from the decisions of which by reason of any written law there is a right of appeal to any High Court and means in relation to any High Court any such court as by any written law has jurisdiction within the local jurisdiction of such High Court*. Wide powers of revision are given to the High Court under sections 31 and 35 of the Courts of Judicature Act 1964.
>
> The following passages appear in *Halsbury's Laws of England*, Third Edition, Volume 9, page 342:
>
> Originally the term 'court' meant among other meanings the Sovereign's palace; …a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a court. Its duties

A

are mainly deliberative and legislative; the judicial duties are only part of its functions. *A coroner's court is a true court although its essential function is investigation.*

The question is whether the tribunal is a court, not whether it is a court of justice, for there are courts which are not courts of justice …

B

Again on page 461 of Vol. 9 of *Halbury's Laws of England* it is said:

> *The coroner's court is a common law court of record and a court of special criminal jurisdiction. The function of the court is to inquire into the cause of death …* The coroner's inquisition may be quashed by the High Court.

C

(emphasis added)

[36] This court has also referred to the decision of the Supreme Court in the case of *PP v. Seeralan* [1985] 1 CLJ 524; [1985] CLJ (Rep) 250; [1985] 2 MLJ 30. In the said case, the Magistrate's Court of Port Dickson was holding an inquest and in the course of the proceedings, the respondent (a member of the Bar) was in court holding a watching brief became emotional and made several allegations of bias against the Bench.

D

[37] What transpired in the said case was, the Magistrate ordered the respondent to leave the court but the respondent refused to comply. He continued to make allegations of bias against the Bench and saying the Bench was unfair and prejudiced. The Magistrate eventually, after an adjournment, invoked para. 26 of the Third Schedule of the Subordinate Courts Act 1948, took cognisance of the contempt committed by the respondent and required him to show cause why he should not be punished.

E

[38] The respondent denied the charge and claimed to be tried before another Magistrate because the Magistrate being himself, the complainant was therefore biased. As a result of that response the Magistrate then fined him RM150 or in default one week's imprisonment. The respondent refused to pay the fine. The next day, the Seremban High Court exercising its powers of revision reversed and set aside the Magistrate's order.

F

G

[39] The Public Prosecutor subsequently referred three questions of law to the Supreme Court. These were:

(i) Whether or not in law criminal contempt has been committed in the face of the court by the respondent by accusing the presiding Magistrate in Port Dickson Magistrate's Court Inquest No. 47/1984 of being biased, unfair and prejudiced and by refusing to leave the court when ordered to do so by the learned Magistrate.

H

(ii) If the answer to question (1) is in the affirmative, then whether it is right in law for the learned Magistrate in the circumstances of this case to exercise his power of punishment for contempt of court summarily.

I

A (iii) If the answer to question (2) is in the affirmative, then whether it is right in law for the learned Judge to set aside the Order of the learned magistrate committing the respondent for contempt of court in chambers without giving due notice or right to be heard to the Public Prosecutor?

B **[40]** Having heard the parties, the Supreme Court answered questions (1) and (2) in the affirmative and declined to answer question (3) and at p. 31 (MLJ) held as follows:

(1) the record clearly revealed the uncompromising attitude of the respondent and his unabashed arrogance and insolence towards the
C Magistrate. *His continued accusations that the court was biased, unfair and prejudiced clearly amounted to a contempt of court*. Such conduct and behaviour were not just disorderly acts nor a mere use of unbecoming language. They constituted a contempt of court of a serious kind, without any mitigating factor;

D (2) *in this case the record clearly showed that the elements of contempt were fully set out and the respondent was asked to show cause*. There was therefore no failure of the court to give the respondent an opportunity to be heard before he was punished;

(3) *the learned Magistrate in this case had a choice of either proceeding under para 26 of the Third Schedule of the Subordinate Courts 1948 or of*
E *authorising a prosecution*;

(4) *the absence of a provision in the Subordinate Court Rules regarding the exercise of the power by the Magistrate does not mean that the power cannot be exercised. The Magistrate can effectively exercise the power so long as the contemnor is given an opportunity of being heard*;

F (5) *in the circumstances the order of the learned Judge of the High Court should be quashed and the order of the learned Magistrate restored.*

(emphasis added)

[41] The Supreme Court in the aforesaid case further held that it was
G correct and proper for the learned magistrate to invoke para. 26 of the Third Schedule to the Subordinate Courts Act 1948 to deal with the situation in order to restore the dignity of the court and bring order to it which was only met by continued defiance of the respondent who kept on repeating the same allegations of bias against the learned Magistrate. The Supreme Court was of
H the view that such conduct and behaviour of the respondent was not just a disorderly act, nor a mere use of unbecoming language but constituted a contempt of court of a serious kind, ie, without any mitigating factor.

[42] Counsel for the respondent in the said case then also submitted that once the respondent had required the contempt of court to be dealt with by
I another Magistrate, the request should be granted; otherwise all subsequent proceedings would be held to be null and void. However, the Supreme Court disagreed with the contention of learned counsel and was of the view that the

Supreme Court cannot infer such a construction in para. 26 of the Third Schedule to the Subordinate Courts Act 1948. If such a construction had been intended, the Legislature would have said so and would not have empowered the same Magistrate cognisance of any contempt of court and to award punishment therefore.

[43] Therefore, this court now is of the view that para. 26 of the Third Schedule to the Subordinate Courts 1948 is clear and unambiguous and that the learned coroner has the power to take cognisance of any contempt of court (be it in the face or not in the face of the court) and to award punishment for the same as provided in the said provisions. If at all the said paragraph was not meant to accord such power to the learned coroner, the limitations as submitted by the appellant's counsel would have been clearly provided in the said provisions.

[44] The canon of interpretation is well-entrenched that the ordinary word and plain language of the law must be given its plain meaning. In *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713 at p. 747, the Federal Court through Steve Shim CJSS gave the following guidance:

> *The primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well established canon of interpretation that the intent of the legislature is to be gathered from the words used and that if the words used have not acquired any technical meaning, they should be deemed to have been used in their ordinary meaning*. If the words of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the lawgiver (see *Bindra's Interpretation of Statutes* - 8th Edition).
>
> (emphasis added)

[45] Further on similar tone, *Bindra's Interpretation of Statutes* at p. 395 explains as follows:

> When the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. *If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provisions. The courts are enjoined to take the words as used by the legislature and to give them the meaning which naturally implies.*
>
> (emphasis added)

[46] Be that as it may, this court opines that the jurisdiction of the inferior courts (which includes the coroner's court) is only limited on the punishments for any contempt which are prescribed in para. 26 of the Third Schedule to the Subordinate Courts Act 1948. The situation differs from that of the superior courts where the powers to punish any contempt are provided in art. 126 of the Federal Constitution and s. 13 of the Courts of Judicature Act 1964. The inferior's court jurisdiction to punish for any contempt is undoubtedly limited unlike the superior courts.

[47] In *PCP Construction Sdn Bhd v. Leap Modulation Sdn Bhd: Asian International Arbitration Centre (Intervener)* [2019] 6 CLJ 1, the Attorney General made an application seeking an order for committal against one Arunanachalam Kasi (Arun Kasi) for contempt of court, more particularly scandalising contempt, pursuant to O. 52 r. 3 of the ROC 2012. The grounds upon which the application was made was that Arun Kasi had scandalised the Federal Court by making various allegations regarding judicial conduct in the hearing, disposal and adjudication of a civil application before the Federal Court in two articles published online by a news portal known as Aliran.

[48] The thrust of the Attorney General's application in the above-referred case is that Arun Kasi's statements in these two articles insinuate that the Federal Court's judges who heard and allowed the application to expunge portions of the dissenting judgment were guilty of misconduct, involved in corrupt activity and had compromised their integrity, to the extent that an investigation by the Malaysian Anti-Corruption Commission ('MACC') was warranted. These insinuations were made in both the articles published by Aliran.

[49] As a consequence of those allegations, the Attorney General, as the guardian of the rule of law, brought contempt proceedings against Arun Kasi, not to protect the dignity of the individual judges concerned, but to protect public confidence in the administration of justice in Malaysia. The publications comprising substantively, if not wholly of Arun Kasi's allegations, were calculated to impair the confidence of the people in the court's judgments and thereby the administration of justice as a whole.

[50] Having heard the parties, the Federal Court at pp. 39-40 held as follows:

> [119] We have weighed the competing evidence and submissions as to whether the impugned statements are fair criticism or amount to scandalising contempt. *For the reasons stated above, we are satisfied beyond reasonable doubt that Arun Kasi's statements were calculated to erode public confidence in the administration of justice and the Judiciary. We therefore allow/ grant the Attorney General's application for committal. We find Arun Kasi guilty of contempt*.
>
> ...
>
> [122] *As we have said in our judgment, it is important to emphasise that the jurisdiction of the courts does not exist to protect the dignity of individual judges personally. It serves to protect the Judiciary as the third arm of Government rather than individual judges. Neither is such jurisdiction to be utilised to restrict honest criticism, which is based on rational grounds, to ascertain the manner in which the court performs its functions. Any such discussion should in any event be conducted bona fide, for and in the public interest*.
>
> ...
>
> [124] What more in the present case as an advocate and solicitor, Arun Kasi as an officer of the court is expected to uphold the dignity of the court.

[125] As an officer of the court, he should always act in a responsible manner and in particular, he should not breach the law, for if he does so, he must face the consequences.

[126] *That is why in the present case, we hold the view that the sentence must reflect the seriousness of the offence committed by him.*

[127] *His contemptuous statements against the Federal Court are very serious and tarnish the good name of the judiciary as a whole. He has undermined the public confidence in the judiciary, ridiculed, scandalised and offended the dignity, integrity and impartiality of the court.*

[128] We have also considered the Bar's submission not to impose a custodial sentence. However, the gravity of the offence committed by Arun Kasi coupled with his refusal to tender an unreserved apology justifies this court taking a serious view of the matter.

[129] *In the circumstances, we are of the view that the appropriate sentence is a term of imprisonment of 30 days from today and a fine of RM40,000 in default, a further 30 days.*

(emphasis added)

[51] At this juncture, this court agrees with the submission of learned counsel for the respondent/applicant that the learned coroner has the jurisdiction to hear contempt proceeding whether in the face or not in the face of the court.

Non-Compliance With Procedural Requirements Under Order 52 Rule 3 Of The ROC 2012

[52] The Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* (*supra*) clearly stated that the law has provided procedural safeguards in committal proceedings which requires strict compliance. Therefore, this court must determine whether the procedural requirements under O. 52 r. 3 of ROC 2012 were strictly adhered to by the respondent/applicant. On this issue, this court is of the view that there were non-compliance by the respondent/applicant of the procedural requirements as stipulated in the said provisions. This court opines that failure to strictly comply with the procedural requirements was fatal to the respondent/applicant's application for committal against the appellant. The non-compliance were in respect of the followings:

Whether The Learned Coroner's Omission To Consider The Affidavit Of The Appellant Dated 19 July 2019 And Hamdan Bin Hamzah's Affidavit Dated 22 July 2019 Is A Misdirection

[53] Having heard the parties, this court is of the view that the learned coroner has misdirected herself by omitting to consider the affidavit of the appellant dated 19 July 2019 and also DPP Hamdan's affidavit dated 22 July 2019 that not only explained the facts of the matter but also actions taken by the appellant and DPP Hamdan respectively in handling the said matter.

[54] The learned coroner ought to have given due consideration to all relevant facts particularly the responses of the appellant and DPP Hamdan whose affidavit was cited by the respondent/applicant. This is more so when the affidavits of the respondent/applicant did not disclose the possible responses of the appellant to the leave application.

[55] For ease of reference, the material parts in respect of the appellant's affidavit dated 19 July 2019 and DPP Hamdan's affidavit dated 22 July 2019 are produced herein respectively as follows:

(A) Appellant's affidavit dated 19 July 2019 (English translation) (see pp 69-74 ROA Vol. 3)

AFFIDAVIT

I, Tommy Thomas ... do solemnly and sincerely affirm and state as follows:

1. I am the intended Respondent in the application for leave for committal proceedings. The facts deposed to herein are within my personal knowledge and from documents to which I had access to.

2. I crave leave of this Honourable Court to refer to the following documents:

   (i) the (*Ex Parte*) Notice of Application for Leave for an Order of Committal;

   (ii) the Statement pursuant to Order 52 rule 3(2) of the Rules of Court 2012 [Statement]; and

   (iii) the Affidavit Verifying Facts pursuant to Order 52 rule 3(2) of the Rules of Court affirmed by Mohd Asraf bin Mohd Kassim on 15.7.2019 [Mohd Asraf's Affidavit].

3. In paragraph 4 of the Statement, the Applicant sets out the grounds upon which my committal is sought. I understand the Applicant alleges that my media statement dated 28.5.2019 [Media Statement] and an affidavit affirmed by Deputy Public Prosecutor Hamdan Hamzah [DPP's Affidavit] have disrupted the continuity and transparency of the inquest proceedings into the death of Muhammad Adib bin Mohd Kassim [Adib's Inquest] and that this is tantamount to unlawful interference in the cause of justice. These allegations are wholly denied.

4. The following are the circumstances that led me to issue the Media Statement:

   (i) I only came to know that Syazlin Mansor, a private lawyer had been appointed to represent the Housing and Local Government Ministry [Ministry] and the Fire and Rescue Department [Fire Department] in Adib's Inquest on or around the 23.5.2019;

(ii) I immediately wrote to the Minister concerned, requesting her to revoke the appointment of Syazlin Mansor as counsel for the Ministry and the Fire Department;

(iii) Before her appointment as counsel for the Ministry and the Fire Department could be revoked, Syazlin Mansor withdrew from representing the Ministry, the Fire Department and the family of the late Muhammad Adib bin Mohd Kassim during Adib's Inquest on 27.5.2019;

(iv) Syazlin Mansor's sudden withdrawal as lawyer for the family of the late Muhammad Adib bin Mohd Kassim caused much confusion and speculation not only in the Coroner's Court but also amongst the public; and

(v) I issued the Media Statement for the purpose of clarifying that confusion and speculation.

A copy of my Media Statement dated 28.5.2019 is exhibited hereto and marked as Exhibit 'A'.

5. *As Attorney General, I am the head of service of over 1200 legal officers in the Attorney General's Chambers that includes Deputy Public Prosecutors who have conduct of criminal matters and Federal Counsel who have conduct of civil litigation. Although all these legal officers report to me, I do not direct nor instruct them on their daily work*.

6. *I have never met Deputy Public Prosecutor Hamdan bin Hamzah [DPP Hamdan]. In this matter, any affidavit that was affirmed and filed by the DPP Hamdan in respect of Adib's Inquest is entirely within his scope of work and I did not give any directions or instructions as to the filing or the contents of the DPP's Affidavit*.

7. I verily believe and state that:

(i) *the inferences and conclusions drawn by the Applicant from the Media Statement are misconceived and without any basis or merit*;

(ii) *the inferences and conclusions drawn by the Applicant from the DPP's Affidavit are mischievous, misconceived and without any basis or merit because from paragraph 11 of the Mohd Asraf's Affidavit, it is obvious the Applicant has never sighted the DPP's Affidavit; and*

(iii) *in all the circumstances of this matter, the Applicant has failed to make out a prima facie case for this Honourable Court to grant leave for him to apply for an order of committal against me*.

8. I humbly pray that the application be dismissed.

(emphasis added)

(B) DPP Hamdan's Affidavit dated 22 July 2019 (English translation) [see pp 84-88 ROA Vol. 3]

AFFIDAVIT

I, HAMDAN BIN HAMZAH ... do solemnly and sincerely affirm and state as follows:

1. I was a Deputy Public Prosecutor [DPP] attached to the Prosecution Unit at the Selangor State Legal Advisor's office and the officer conducting the inquest into the death of Muhammad Adib bin Mohd Kassim [Muhammad Adib] before the Coroner's Court in Selangor until the date of my retirement on 1.5.2019. The facts deposed to herein are within my personal knowledge and from documents to which I had access to.

2. I crave leave of this Honourable Court to refer to the following documents:

   (i) the application for Leave for an Order of Committal;

   (ii) the Statement pursuant to Order 52 rule 3(2) of the Rules of Court 2012 [Statement];

   (iii) the Affidavit Verifying Facts pursuant to Order 52 rule 3(2) of the Rules of Court affirmed by Mohd Asraf bin Mohd Kassim on 15.7.2019 [Mohd Asraf's Affidavit];

   (iv) the Affidavit affirmed by the Attorney General [AG] on 19.7.2019.

3. I am duly authorised by AG to affirm and file this affidavit.

4. In paragraph 4 of the Statement, the Applicant sets out the grounds upon which the order for committal is sought against the AG. Briefly, one of the allegations is that the affidavit I affirmed on 3.4.2019 have disrupted the continuity and transparency of the inquest proceedings into the death of Muhammad Adib [Adib's Inquest] and that this is tantamount to unlawful interference in the cause of justice. These allegations are wholly denied.

5. *As the conducting officer, I had charge of Adib's Inquest and at no time did the AG direct or instruct me personally as to the filing or the contents of any of the affidavits.*

6. *In paragraph 11 of Mohd Asraf's Affidavit, the deponent makes reference to an affidavit I affirmed on 15.4.2019. I did not affirm any affidavit on 15.4.2019*

7. The affidavit referred to in paragraph 4(ix) of the Statement and "Exhibit – 6" in Mohd Asraf's Affidavit refer to the additional affidavit I affirmed on 3.4.2019 [My Affidavit]. My Affidavit was affirmed and filed in the Court of Appeal for Notice of Motion No: B-07-12-02/2019 to support the Public Prosecutor's application to strike out an appeal and stay application brought by Save Seafield Mariamman Temple Task Force *vide* Criminal Appeal No: B-09-61-02/2019.

A copy of my Additional Affidavit affirmed on 3.4.2019 is exhibited hereto and marked as Exhibit "A". A

8. *The statement in paragraph 6 of My Affidavit is not a premature statement as alleged by the Applicant. Reading My Affidavit in its entirety would show that the statement was made in the context of the preceding paragraphs which refers to all the evidence that had been adduced at Adib's Inquest as at 2.4.2019*. B

9. For this Honourable Court's consideration.

(emphasis added)

[56] This court is of the view that had due considerations be given to the above-quoted paragraphs and not been erroneously omitted by the learned coroner, the scenario surrounding the purported act of contempt by the appellant would perhaps be addressed and dealt with, differently. In all probability, the learned coroner would not have come to its decision in granting the said leave to the respondent/applicant. C D

[57] According to the learned coroner, the application for leave for committal was heard on an opposed *ex parte* basis. Upon evaluation, it is the view of this court that since the parties were already before the learned coroner for the ongoing inquest proceedings, the application ought to have been treated as *inter parte* instead. E

[58] This court opines that the circumstances surrounding this case warrants such *inter parte* proceedings as the purported act of contempt by the appellant happens in the course of the ongoing inquest proceedings and the parties were present before the learned coroner. This would enable the learned coroner to come to a better understanding of all the material facts and thereby the consideration on the purported act of contempt by the appellant. F

[59] The Court of Appeal in *Mukhriz Mahathir v. Datuk Seri Mohd Najib Tun Hj Abdul Razak & Anor* [2018] 6 CLJ 573; [2018] 3 MLJ 715 through Hasnah Hashim JCA (now FCJ) in determining whether the learned judge erred when he heard the matter as opposed *ex parte* and whether there is a *prima facie* case of contempt has decided as follows: G

[18] *In order for the court to be able to make a fair and just decision all relevant facts must be before it. In an ex parte application, there must be full and frank disclosure of material facts by the applicant. The applicant must only make submissions in support of the application and also highlight potential arguments against the grant of the application, including the facts that are likely to be raised by the proposed alleged contemnor in objecting to the application if it were an inter parte application. Whilst O. 52 r. 3 of the ROC provides that an application must be made ex parte the court nevertheless still retains the discretion to order that the matter be heard inter-parte with the necessary directions if the circumstances so warrant and this discretion must no doubt be exercised judiciously*. H I

[19] VT Singam J in the case of *Dato' Oon Ah Baa @ Boon Pak Leong & Others v Eagle & Pagoda Brand Teck Aun Medical Factory Sdn Bhd & Others* [2003] 7 CLJ 81; [2003] MLJU 291 made the following observation:

> In *London City Agency (jcd) Ltd And Another v. Lee And Others* [1970] 1 Ch 597, the plaintiffs had obtained an interlocutory injunction granted *ex parte* by the Vacation Judge, His Lordship Eveleigh J. The defendants then filed an *ex parte* application to discharge the interlocutory injunction granted *ex parte*. In varying the said interlocutory injunction, His Lordship Megarry J observed:
>
> > *Although the application before me is made ex parte, counsel for the plaintiffs has been present and has considerably assisted the court.*

[20] In *Dato Oon Ah Ba* Justice VT Singam was of the view that *although the plaintiff's application for leave was made ex parte, there was nothing irregular for the said defendants' counsel to be present in court where the said defendants became aware of this application and if necessary to assist the court if called upon even in an ex parte application.*

[21] *Megarry J, in Pickwick International Inc (GB) Ltd v. Multiple Sound Distributors Ltd And Another [1972] 3 All ER 384 observed that the court would be greatly assisted in deciding whether or not to grant the ex parte injunction by knowing the contentions that may be advanced against the grant of the application. The court would then be aware of the general line of evidence in opposition to the application when it hears the application inter partes. It makes it possible for the disputed facts and issues to be highlighted thus saving the court's time.* To appreciate this point, we reproduce the relevant portion of Megarry J's remarks in *Pickwick International*:

> ... In most cases the court will obviously be assisted in deciding whether or not to grant the *ex parte* injunction by knowing what contentions may be advanced against the grant, and what is the general line of the evidence in opposition that is likely to be filed when the applicant later moves on notice. *An advantage to the applicant is that the court, having heard what there is to be said in opposition to the grant of the injunction, may sometimes be encouraged to grant an injunction that otherwise would be refused. Furthermore, the applicant may escape an avoidable liability on his undertaking in damages, though the other procedure also achieves this result. Nevertheless, there is a considerable practical difference between the ebb and flow of argument in inter partes proceedings, and the still life of hearing all that one side has to say, reaching a decision, and then hearing separately all that the other side has to say. There can be no doubt, too, that proceedings inter partes usually make it possible for the real points to emerge more quickly, and thus save time.*

[22] In *Chuan Huat Lin Lime Factory v. Yap Chee Seng & Ors [1995] MLJU 5 His Lordship KC Vohrah (as he then was) had ordered the ex parte application for leave to commit the defendant to prison for a breach of an injunction order to be heard inter partes as the court wanted to hear arguments whether in the first place there was a prima facie case of contempt.*

(emphasis added)

[60] Further, the learned coroner has omitted to consider the whole contents of the appellant's media release dated 28 May 2019. The respondent/applicant too has failed to draw the attention of the learned coroner to the said media release in its entirety to be fully considered by the learned coroner.

[61] In addition, this court opines that whilst O. 52 r. 3 of the ROC 2012 provides that an application must be made *ex parte* the court nevertheless still retains the discretion to order that the matter be heard *inter parte* with the necessary directions if the circumstances so warrant and this discretion must no doubt be exercised judiciously.

[62] Despite being at liberty to exercise the option to hear the matter *inter parte* which the circumstances in the instant case warrants/justifies, the learned coroner has chosen to hear the matter as an opposed *ex parte* instead and therefore has misdirected herself and this misdirection has seriously prejudiced and caused unfairness to the appellant.

[63] In *Zainur Zakaria v. PP* [2001] 3 CLJ 673; [2001] 3 MLJ 604, the Federal Court in allowing the appellant's appeal on the decision of the learned High Court Judge that found the appellant guilty of contempt and sentenced him to three months' imprisonment at pp. 604-605 (MLJ) held as follows:

> [1] (per Steve Shim CJ (Sabah & Sarawak): The appellant was *prima facie* justified in filing the said application. There could not therefore have been any abuse of the process of court having the effect of undermining the authority and/or integrity of the trial in progress. The charge of contempt of court against the appellant had not been proved beyond reasonable doubt. *The phrase 'an opportunity of answering the charge' must necessarily include that a reasonable opportunity be given to the alleged contemnor to prepare his case. That the conduct of the hearing must be fair is a reflection of the deeper principle that the alleged contemnor is entitled to present his case fully*. The learned High Court judge should have allowed the appellant the adjournment he requested so that he could prepare his defence fully, fairly and effective. By refusing to grant the adjournment, the appellant had been deprived of the opportunity of answering the charge against him (see pp 617E-F, 619I-620A, E-F; *Joginder Singh & Ors v. Attorney General* [1983] 1 MLJ 71 followed.
>
> [2] (per Abdul Malek Ahmad FCJ): *Re Bramblevale Ltd* [1970] Ch 128 had decided that in contempt of court cases, proofs must be beyond reasonable doubt. The learned trial judge did not allude to the burden of proof in his judgment. *Since the procedure taken was wrong and the matter had certainly not been proved beyond reasonable doubt, the learned trial judge fell into error in deciding that contempt of court had taken place*. If the appellant's client had the right to make a complaint and if he had acted properly in making the application, then the appellant's act of filing the application on his client's behalf could not have constituted an interference with the administration of justice and consequently contempt of court. There was really no basis to find the appellant had acted in bad faith in filing the application on behalf of his client.

A [3] (per Haidar FCJ): The issue of trying to derail the trial did not arise as evidence showed that the appellant was merely asking for a short adjournment to prepare his defence, that is, just a few days. *Surely justice should be accorded to him to do so as his liberty was at stake and such an application should not be viewed negatively by the court as if to prevent or delay the course of justice*.

B

(emphasis added)

The Affidavit Verifying The Facts Dated 15 July 2019 And Additional Affidavit Dated 24 July 2019 Affirmed By Mohd Asraf Bin Mohd Kassim Under Order 52 rule 3(2) Of The ROC 2012

C **[64]** This court is of the view that since Mohd Asraf bin Mohd Kassim is not the applicant, he ought not be the one that affirmed the affidavits dated 15 July 2019 (see pp. 17-59 ROA Vol. 3) and 24 July 2019 (see pp. 89-96 ROA Vol. 3) seeking to verify the facts in the statement of the applicant. Even though this issue was not raised by the appellant, this court is of the D view that it is relevant and hence pertinent for this court to evaluate the said issue.

[65] The applicant in this case is Mohd Kassim bin Abdul Hamid and that the statement dated 15 July 2019 (see pp. 1-16 ROA Vol. 3) under O. 52 r. 3(2) of the ROC 2012 was made by him. However, the affidavits verifying E the facts were instead affirmed by Mohd Asraf bin Mohd Kassim. The reason being the applicant was away overseas. Therefore this court is of the view that the learned coroner should not have considered the affidavits verifying the facts affirmed by Mohd Asraf bin Mohd Kassim.

[66] Further, this court opines that Mohd Asraf bin Mohd Kassim has no F *locus* and personal knowledge of the matter and not in the proper position to verify the facts in the statement of the applicant. This resulted in an additional affidavit dated 24 July 2019 had to be affirmed by him to rectify an omission in an earlier affidavit of his dated 15 July 2019 at para. 11 that refers to a mistaken date of DPP Hamdan Hamzah's affidavit.

G **[67]** Apart from the mistaken date of DPP Hamdan's affidavit, Mohd Asraf's affidavit dated 24 July 2019 enclosing DPP Hamdan's affidavit dated 3 April 2019 ought not even be deliberated nor substantiated in the learned coroner's eventual decision.

[68] On this issue, the decision in *Tan Sri Dato' (Dr) Rozali Ismail & Ors* H *v. Lim Pang Cheong @ George Lim & Ors* (*supra*), is relevant and has been considered by this court. In the said case, the Federal Court has set aside the leave granted to the applicants to commence committal proceedings against the respondents and made these observations:

I [34] The procedural law on committal in our law is laid down in O. 52 of the RHC which is based on the then O. 52 of the English Rules of Supreme Court 1965 (Revision 1965). It provides that no application for a committal order can be made without leave of the court. The application for such leave must be made in accordance with O. 52 r. 2 of the RHC.

[35] For ease reference, r. 2 is reproduced below:

(1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Court, except in vacation when it may be made to a Judge in Chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

[36] *The safeguards in r. 2(2) entail the application to be supported by a statement describing amongst others, the person sought to be committed and the grounds on which he is alleged to be in contempt. It must be supported by an affidavit verifying the facts relied on in the statement.*

[37] *We wish to state in clear term that the alleged act of contempt must be adequately described and particularised in detail in the statement itself. The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. Any deficiency in the statement cannot be supplemented or cured by any further affidavit at later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself.* The same approach was taken by the Supreme Court in *Arthur Lee Meng Kwang* case (see also *Syarikat M Mohamed v. Mahindapal Singh & Ors* [1991] 2 MLJ 112.

(emphasis added)

[69] This court is of the view that since Mohd Asraf was not the applicant and has no *locus* and personal knowledge on the matter, the proper person to verify the facts relied in the statement was Mohd Kassim himself.

[70] By the abovementioned, this court opines that the said omission by Mohd Kassim to verify the statement himself tantamounts to an act of non-compliance to the procedural requirements as stipulated in O. 52 r. 3(2) of the ROC 2012.

Whether There Exists Non-Disclosure Of The Material Facts By The Respondent/Applicant With Regards To The Statement Dated 15 July 2019 Made By The Respondent/Applicant Under Order 52 rule 3(2) ROC 2012

[71] This court further takes the view that the respondent/applicant has not revealed or disclosed all material facts in the statement especially the facts that are favourable to the appellant or likely to be raised by the appellant or potential arguments against the grant of such leave.

[72] The disclosure is important because in order for the learned coroner to be able to make a fair and just decision on the leave application, all relevant facts must be presented before the learned coroner. There must be full and frank disclosure of all material facts by the respondent/applicant.

[73] The very essence of the insistence on the adherence to sufficient particularity of the statement is so that a proposed contemnor is fully aware of the case of contempt instituted against him. There ought not be any omission on the part of the respondent/applicant to state the material facts for due consideration of the learned coroner.

[74] Further, this court opines that the respondent/applicant is not entitled to merely state the facts favouring his application and the learned coroner must rely on that alone. Otherwise the leave procedure would cease to be a safeguard and instead easily become a tool exploited for oppression.

[75] The Court of Appeal in *Tan Sri G Darshan Singh v. Tetuan Azam Lim & Pang* [2013] 1 CLJ 1060; [2013] 5 MLJ 541 through Abdul Wahab Patail JCA in dismissing the appellant's appeal for an order of committal against the respondent/garnishee at pp. 1068-1069 (CLJ); pp. 548-549 (MLJ) has made these observations:

> [12] Order 52 r. 2(2) provides that an application for leave to commence committal proceedings must be made *ex parte* to the court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.
>
> [13] It has been held by the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458;; [2012] 2 CLJ 849 (FC) that it is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. *Premised upon that, the law has provided procedural safeguards before a party is labelled as an alleged contemnor and committal proceedings allowed to be begun against him. Firstly, even though it is obtained ex parte, the law nevertheless required leave to be obtained to commence committal proceedings. Secondly, strict compliance is required. Thirdly, be it a civil or a criminal contempt, the standard of proof required is proof beyond reasonable doubt*.
>
> [14] Strict compliance not only means that the applicant is bound by the mandatory statement under O 52 r. 2(2), but it was also held in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* that:
>
> > [36] The safeguards in r. 2(2) entail the application to be supported by a statement describing amongst others, the person sought to be committed and the grounds on which he is alleged to be in contempt. *It must be supported by an affidavit verifying the facts relied on in the statement*.
> >
> > [37] We wish to state in clear term that the alleged act of contempt must be adequately described and particularised in detail in the statement itself. *The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. Any deficiency in the statement cannot be supplemented or cured by any further affidavit at later*

time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. *This must be done within the four walls of the statement itself*. The same approach was taken by the Supreme Court in *Arthur Lee Meng Kwang* case (see also *Syarikat M Mohamed v Mahindapal Singh & Ors* [1991] 2 MLJ 112.

[15] It must also be borne in mind that the application for leave to commence committal proceedings is made *ex parte*. To enable the court to make a fair and just decision, it must necessarily have all the relevant facts before it. *In an ex parte application, it means the applicant must set out the facts fairly, including the facts that are likely to be raised by the proposed alleged contemnor in objecting to the application if it were an inter parte application. If any fact is likely disputed by the other party, the applicant must say so and give his reasons why such dispute is not sustainable, or is irrelevant or immaterial*. There is no reason not to be able to do so for after all only the applicant has the opportunity to be heard upon it is the *ex parte* application. *It certainly does not mean the applicant is entitled to merely state the facts favouring his application and the court must rely on that alone. Otherwise the leave procedure would cease to be a safeguard and instead easily becomes a tool exploited for oppression*.

(emphasis added)

[76] Further, as highlighted above, the respondent/applicant failed to draw the attention of the learned coroner to the appellant's media release dated 28 May 2019 in its entirety to be fully understood and deliberated upon by the learned coroner (see pp. 14-16 ROA Vol. 3). Instead, this court observed that the learned coroner only confined her consideration to certain paragraphs of the said media release in particular on the role of Syazlin Mansor, counsel on record then, holding watching brief on behalf of the Ministry of Housing and Local Government, the Fire and Rescue Department and the family of the deceased.

[77] The learned coroner's findings are reflected in her grounds of judgment that can be seen at pp. 35-36 of ROA Vol. 1 as follows:

Oleh kerana kebanyakan isu yang timbul adalah berkisar kepada prosiding inkues berkenaan yang saya sendiri bersidang sebagai koroner dan mempunyai pengetahuan langsung mengenainya, maka saya berhak dan telah mengambil notis kehakiman mengenai isu-isu berkaitan.

Pada masa yang sama, setelah meneliti kertas kausa pemohon, saya berpuas hati bahawa pemohon telah atas imbangan kebarangkalian menunjukkan secara prima facie bahawa AG telah mengambil pendirian (position) pra matang mengenai sebab dan punca kematian arwah Muhammad Adib.

Selain bersetuju dengan hujahan peguam Pemohon yang bijaksana bahawa tindakan-tindakan AG memberikan cadangan bahawa AG telah mengambil kedudukan sedemikian, saya juga merujuk kepada apa yang telah berlaku di hadapan saya pada 27.5.2019.

Perkara ini juga telah didedahkan oleh peguam Syazlin Mansor di dalam paragaraph 12 kenyataan akhbarnya (exhibit -2 kepada lampiran 64). Di mana, pada 27.5.2019 iaitu sehari sebelum Kenyataan Media AG dikeluarkan, pegawai pengendali inkues di dalam menjawab pertanyaan Puan Syazlin kepadanya mengenai sebab sebenar arahan penamatan khidmat beliau dikeluarkan oleh AG, telah mengesahkan, bahawa AG memang telah sedia maklum sedari awal dan tidak membuat sebarang bantahan untuk Puan Syazlin bertindak mewakili ketiga-tiga pihak berkepentingan iaitu KPKT, Bomba dan juga keluarga arwah Adib di dalam inkues berkenaan. *Namun, perkara ini telah menjadi isu bagi AG apabila Puan Syazlin sentiasa bercanggah dengan kedudukan yang diambil oleh pegawai pengendali dan mempersoalkan teori dan memeriksa pakar patalogi forensik HKL iaitu SI 24 secara terperinci dan kekadang agresif.* Kenyataan ini dibuat di dalam kamar saya di dalam kehadiran para peguam lain yang turut mewakili keluarga arwah Adib.

Maklumat ini jelas menunjukkan bahawa AG/AGC mengambil kedudukan mengenai punca kematian arwah Muhamad Adib iaitu sebagaimana teori pakar HKL (SI 24) dan merasa tidak senang dengan cubaan untuk menggoyah teori berkenaan. (emphasis added)

[78] With respect, this court is of the view that the learned coroner has misconstrued the action taken by the appellant. In the said media release, the appellant has actually explained that despite Syazlin Mansor's insistence to withdraw, Prof Dr Shahrom Abdul Wahid (SI 29), an expert witness assisting the learned coroner could still be called by the Attorney General's Chambers (AGC) to further testify in the inquest.

[79] This clearly rebuts the perception that Syazlin Mansor's removal would result in the calling off the presence of Prof Dr Shahrom to further testify. Therefore, the perception that the appellant had taken a position in relation to the cause of death of the deceased, with respect, is unsubstantiated.

[80] Further, the respondent/applicant also failed to specifically draw the attention of the learned coroner to the whole contents of DPP Hamdan's affidavit dated 3 April 2019 that his averments were made based on all the evidence that had been adduced in the inquest at the material time (see pp. 80-83 ROA Vol. 3). The material parts of DPP Hamdan's affidavit dated 3 April 2019 are reproduced herein as follows:

AFIDAVIT TAMBAHAN

Saya, HAMDAN BIN HAMZAH ... dengan sesungguhnya berikrar dan menyatakan seperti berikut:

1.Saya adalah seorang Timbalan Pendakwa Raya yang bertugas di Unit Pendakwaan di Pejabat Penasihat Undang-Undang Negeri Selangor dan diberi kuasa untuk mengikrarkan afidavit ini dan semua fakta dan perkara yang dideposkan di sini adalah benar dan di dalam pengetahuan saya sendiri kecuali yang dinyatakan sebaliknya.

2.Saya mengetuai pegawai pengendali inkues Muhamad Adib bin Mohd Kassim (selepas ini dirujuk sebagai inkues Adib) yang sedang berlangsung di Mahkamah Koroner di Shah Alam yang telah ditetapkan sehingga 12.4.2019.

3.Saya seterusnya menyatakan bahawa sehingga 2.4.2019 pasukan kami telah memanggil seramai 28 orang saksi termasuk saksi terakhir Saksi Inkues ke 28 (SI 28) iaitu pegawai penyiasat yang juga merupakan saksi inkues yang terakhir untuk memberi keterangan. Keterangan SI 28 ini telah hampir ke penghujung di mana kami akan memainkan video-video yang viral di media sosial yang telah dikumpulkan oleh SI 28 semasa siasatan dijalankan untuk dicam oleh SI 28 dan beberapa saksi lain yang turut juga akan mengecam kandungan video-video ini sebagai kejadian yang berlaku pada malam kejadian.

4 ...

5. Saya dengan tegas menyatakan bahawa di dalam prosiding inkues keterangan dari Datuk Doktor Mohd Shah bin Mahmood (SI 26) iaitu Pakar Pathology Forensik yang menjalankan pemeriksaan "clinical forensic" ke atas simati ketika simati masih hidup iaitu pada hari keempat simati mendapat rawatan di Institut Jantung Negara (IJN) dan keterangan Doktor Ahmad Hafizam bin Hashim (SI 24) Pakar Pathology Forensik yang menjalankan bedah siasat ke atas mayat simati dan mengesahkan kecederaan yang dialami oleh simati yang membawa kepada kematian simati apabila dilihat secara keseluruhan, bukanlah kecederaan akibat dipukul. *Akan tetapi menurut SI 24 kecederaan yang membawa kepada kematian simati adalah kecederaan yang dialami di bahagian dada simati adalah akibat terhentak ke atas permukaan yang lebar, bersegi dan kasar yang menyebabkan simati mengalami kecederaan patah beberapa tulang rangka sebelah atas dan dua daripadanya patah berganda yang tertusuk ke paru-paru simati sehingga menyebabkan paru-paru kanan simati bocor yang mana seterusnya membawa kepada kematian simati*.

6. *Sehubungan dengan itu seterusnya saya menyatakan bahawa kematian simati bukan akibat dipukul oleh mana-mana orang*.

7. *Seterusnya saya juga memohon menarik perhatian Mahkamah Yang Mulia ini bahawa pegawai penyiasat SI 28 adalah saksi terakhir yang dipanggil oleh pihak kami di dalam prosiding inkues ini yang mana pihak kami dijangka akan menutup inkues ini pada hari ini kecuali terdapat permohonan pihak-pihak yang mewakili keluarga simati atau yang mewakili Kementerian Perumahan dan Kerajaan Tempatan untuk memanggil saksi mereka*.

8. *Berdasarkan alasan-alasan yang saya nyatakan maka rayuan Responden adalah akademik dan fakta ini menyokong permohonan Pemohon untuk membatalkan rayuan Responden*. (emphasis added)

[81] This court is of the view that the contents of DPP's Hamdan affidavit has shown that the proceeding of the inquest was still on-going then and that the learned coroner has not given her verdict on the outcome of the inquest as provided under s. 337 of the CPC. Furthermore, Prof Dr Shahrom Abd. Wahid (SI 29) as the final witness in the inquest has not completed giving his evidence in the inquest.

[82] Further, the respondent/applicant failed to highlight that the appellant indeed had the constitutional and legal right to advise the Minister for Housing and Local Government to discontinue the services of Syazlin Mansor as the lawyer holding watching brief for the Ministry of Housing and Local Government and the Fire and Rescue Department and to be replaced with any Senior Federal Counsels from AGC despite which, she could still continue to act for the family of the deceased if she so aspires.

[83] Further, it was on her insistence, not the appellant's instruction, that she withdrew from representing the deceased's family and that when the inquest was called for case management before the learned coroner on 26 June 2019, she eventually decided to continue representing the deceased's family till completion of the inquest.

[84] This court is of the view that the above-mentioned facts are relevant and material to be highlighted by the respondent/applicant. Failure and/or omission on the part of the respondent/applicant to do so entails a non-compliance. Inevitably such non-disclosure may have led the learned coroner to grant the said leave which she would otherwise not have granted.

Whether The Learned Coroner Had Considered Facts And Circumstances Beyond The Ambit Of The Statement And The Verifying Affidavits

[85] Having heard the parties, this court is of the view that the learned coroner has considered matters beyond the ambit of the statement and the affidavits verifying the facts. The learned coroner has considered unverified media reports which were neither raised nor exhibited in the statement and the affidavits verifying the facts that there was a call to establish a Royal Commission of Inquiry to replace the inquest (see the learned coroner's judgment at p. 40 ROA Vol. 1).

[86] The learned coroner also took into account the evidence of witnesses, among others, Muhammad Ashraff bin Baruji (SI 16) who gave evidence in the inquest that the deceased informed him that he was dragged out of the van and beaten and also the evidence of Tuan Syed (SI 18) on the 'dying declaration' of the deceased which was neither raised nor exhibited in the statement and the verifying affidavits. This was reflected in the learned coroner's judgment at p. 37 ROA Vol. 1.

[87] This court is of the view that the alleged act of contempt must be adequately described and particularised in detail in the statement itself. The accompanying affidavit is only to verify the facts relied in the statement. It cannot add facts to it.

[88] Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. This must be done within the four corners of the statement itself. It was pointed earlier that in an additional affidavit dated 24 July 2019 had to be affirmed by Mohd Asraf to rectify an omission in an earlier affidavit of his dated 15 July 2019 at para. 11 that refers to a

mistaken date of DPP Hamdan's affidavit. Therefore, by considering matters beyond the statement made by the applicant, this court opines that the learned coroner has misdirected herself.

Whether The Learned Coroner Has Exercised Her Discretion Judiciously In Granting The Said Leave

[89] It is an established principle that an appellate court will not interfere with the exercise of a discretionary jurisdiction of the court below unless that discretionary jurisdiction was not exercised judiciously or was wrong in law. The grant or refusal of an application for leave is very much an exercise of the learned coroner's power of discretion and the question that must be determined by this court is whether the learned coroner had exercised her discretion judiciously.

[90] On this issue, the learned coroner in her grounds of judgment that can be seen at pp. 39-41 of the ROA Vol. 1 has stated as follows:

> Senario kejadian yang menjadi latar belakang kepada kematian arwah Adib pula menjadikan prosiding ini amat penting untuk dilihat bebas dan telus di dalam mencari punca kematian beliau tanpa sebarang campur tangan atau kacau ganggu dari mana-mana pihak. Ia bukan hanya perlu telus dan bebas tetapi mesti dilihat (must been seen) sebagai telus dan bebas.
>
> *Justeru pendekatan yang adil dan wajar di dalam menentukan persoalan ini adalah dengan melihat kesan tindakan AG kepada prosiding ini dari kaca mata dan persepsi umum.*
>
> Tambahan pula inkues ini telah diadakan selaras dengan kuasa dan arahan (direction) AG sendiri di bawah seksyen 339(1) Kanun Tatacara Jenayah. Arahan ini menunjukkan punca kematian arwah Adib adalah 'unknown' kepada AG dan dengan arahan ini, AG telah menyerahkan kepada bidangkuasa koroner untuk menjalankan siasatan dan mencapai dapatannya dan akhirnya memutuskan punca kematian arwah Adib sejajar dengan terma-terma rujukan yang digariskan oleh peruntukan seksyen 337 KTJ.
>
> *Justeru adalah amat tidak wajar dan menyalahi prinsip perundangan inkues serta subjudis bagi AG untuk mengambil kedudukan mengenai punca kematian arwah Adib yang masih menjadi persoalan yang cuba dirungkaikan di dalam inkues yang sedang berlangsung.*
>
> ...
>
> *Adalah sesuatu yang boleh dijangkakan oleh AG bahawa apabila beliau dengan kedudukannya dan kuasa perundangan yang ada pada jawatannya, mengambil kedudukan pra matang mengenai punca kematian arwah Adib dan/atau apabila beliau mengambil tindakan-tindakan yang secara munasabahnya memberikan gambaran atau yang boleh ditafsirkan dan dilihat oleh umum sebagai mengambil kedudukan pra matang mengenai sebab kematian arwah Adib ini, maka akan timbul kegelisahan, kegusaran dan persepsi yang negatif di kalangan masyarakat terhadap integriti, ketelusan dan kebebasan di dalam pelaksanaan keadilan di dalam prosiding inkues yang sedang berlangsung tersebut.*

A *Dalam kata lain, pelakuan AG yang sedemikian itu telah 'scandalised' prosiding inkues tersebut. Inkues berkenaan boleh sahaja ditanggap (perceived) sebagai hanya satu lakonan atau permainan wayang dan satu proses 'rubber stamping' sahaja kepada kedudukan yang telah diambil oleh AG.*

(emphasis added)

B **[91]** This court is of the view that the appellant purported act of scandalising the inquest as perceived by the learned coroner was unjustified and unsubstantiated. The appellant has explained the matter in his media release dated 28 May 2019 and also in his affidavit of reply dated 19 July 2019 which were not considered by the learned coroner. With respect, the C said inquest was not a play-acting or a rubber-stamping process as perceived by the learned coroner.

[92] Similarly, DPP Hamdan in his affidavit of reply dated 22 July 2019 has also explained the matter but the learned coroner also did not consider DPP Hamdan's affidavit.

D

[93] Hence, this court is of the view that the learned coroner failed to exercise her discretion judiciously and had misdirected herself in law and in fact in granting the said leave to the respondent/applicant.

Whether A Prima Facie Act Of Contempt Was Committed By The Appellant E *Pursuant To His Media Release Dated 28 May 2019 And DPP Hamdan's Affidavit Dated 3 April 2019*

[94] The learned coroner in her grounds of judgment at pp. 35 of the ROA Vol. 1 has decided as follows:

F *Pada masa yang sama, setelah meneliti kertas kausa pemohon, saya berpuas hati bahawa pemohon telah atas imbangan kebarangkalian menunjukkan secara prima facie bahawa AG telah mengambil pendirian (position) pra matang mengenai sebab dan punca kematian arwah Muhammad Adib.* (emphasis added)

[95] On similar tone, at p. 41 of the ROA Vol. 1, the learned coroner further reiterated in her judgment:

G

Oleh itu, atas imbangan kebarangkalian saya memutuskan bahawa pemohon telah menunjukkan secara prima facie bahawa AG telah melakukan penghinaan terhadap mahkamah ini. Dengan itu, saya membenarkan pemohon untuk memulakan prosiding penghinaan terhadap AG sebagaimana yang dipohon di dalam enclosure 62 ini. (emphasis added)

H

[96] Having heard the parties, this court opines that there has been deficiencies in the statement made by the respondent/applicant under O. 52 r. 3(2) of the ROC 2012. The affidavits verifying the facts in the statement were also defective and unacceptable for non-compliance of the said rule.

I

[97] Further, the material facts and circumstances favourable to the appellant have been omitted by the respondent/applicant and therefore have not been judicially appreciated by the learned coroner in finding a *prima facie* act of contempt on the part of the appellant. This caused unfairness which resulted in the appellant being seriously prejudiced.

[98] It is worth to note that the appellant himself was not present in the inquest as at all material time the inquest was conducted or assisted by DPP Hamdan. To add to that, the affidavits by the appellant and DPP Hamdan to clarify the matter were not considered by the learned coroner, to which this court views that this in itself is a serious misdirection on the part of the learned coroner.

[99] Be that as it may, this court opines that the application by the respondent/applicant ought to be heard *inter parte* instead. Further, strict compliance to the procedural requirements as envisaged by the provisions of O. 52 r. 3 of the ROC 2012 have not been proven to have been complied with by the respondent/applicant.

[100] In addition, having considered all the available facts already submitted before the learned coroner, this court is of the view that there was no *prima facie* act of contempt on the part of the appellant. The learned coroner has misdirected herself in evaluating the facts and circumstances of the matter and made an erroneous decision in granting the said leave to the respondent/applicant.

[101] The Federal Court in *Balachandran v. PP* [2005] 1 CLJ 85; [2005] 2 MLJ 301 speaking through Augustine Paul JCA (later FCJ) on the meaning of the phrase '*prima facie*' has made these observations:

> [21] Section 180(1) makes it clear that the standard of proof on the prosecution at the close of its case is to make out a *prima facie* case while s. 182A(1) enunciates that at the conclusion of the trial the court shall consider all the evidence adduced and decide whether the prosecution has proved its case beyond reasonable doubt. *The standard of proof on the prosecution at the end of its case and at the end of the whole case has thus been statutorily spelt out in clear terms. The submission made must therefore be ratiocinated against the background of the meaning of the phrase 'prima facie case' in s 180. Section 180(2) provides that the court shall record an order of acquittal if a prima facie case has not been made out while s 180(3) provides that if a prima facie case has been made out the accused shall be called upon to enter his defence. A prima facie case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal.*
>
> *The phrase 'prima facie case' is defined in similar terms in Mozley and Whiteley's Law Dictionary 11th Ed as*:
>
> > *A litigating party is said to have a prima facie case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A prima facie case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side*.

> [22] ... *Since the court, in ruling that a prima facie case has been made out, must be satisfied that the evidence adduced can be overthrown only by evidence in rebuttal it follows that if it is not rebutted it must prevail. Thus if the accused elects to remain silent he must be convicted. The test at the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a prima facie case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case for the prosecution. If there is any such doubt there can be no prima facie case*.
>
> (emphasis added)

[102] In *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210; [1993] 2 MLJ 217, the Supreme Court has dismissed the appeal by the appellants and agreed with the learned trial judge's findings that there was a *prima facie* case for contempt against the appellants and at p. 217 (MLJ) held as follows:

> [2] *Here, the trial judge had accepted that there was a prima facie case for contempt against the appellants. There was nothing to show that the trial judge had exercised his discretion wrongly. Nor was there any material to show that he was wrong in law or had erred in principle*. The appellants have not altogether been barred from being heard on their applications to set aside the injunction. All that the High Court had done was to postpone the hearing of those applications until encl 27 had been disposed of. This the learned judge was manifestly entitled to do and his decision to so proceed was entirely correct. (emphasis added)

[103] Having heard the parties, this court is of the view that there was no *prima facie* act of contempt against the appellant as decided by the learned coroner. Neither was there any act on the part of the appellant in scandalising the inquest as perceived by the learned coroner. As such, this court finds that the learned coroner had exercised her discretion wrongly and had erred in granting the said leave to the respondent/applicant.

Standard Of Proof Required For Leave To Commence Criminal Committal Proceedings

[104] This court has considered what should be the paramount consideration when evaluating the standard of proof in granting leave in criminal contempt applications. Whether evaluation of such suffices to be on the balance of probabilities (lower burden) or should it be evaluated on a beyond reasonable doubt test (higher burden).

[105] On the standard of proof in granting leave, this court is of the view that since the instant case is a criminal contempt, therefore the standard of proof to be applied by the learned coroner before granting such leave for committal proceedings ought to be higher than on the standard of balance of probabilities.

[106] In *Tan Kang Ho v. Mao Sheng Marketing (M) Sdn Bhd & Ors* [2015] 4 CLJ 113 (HC) the learned High Court Judge has decided that the purpose of the leave requirement is to ensure that there is no abuse of the committal procedure and that the leave requirement acts as a sieve to ensure that there is a *prima facie* basis for the committal application. The learned judge also held that the purpose of the leave requirement is to prevent abuses of the committal procedure and such a purpose may be fulfilled without the need for such a high standard of proof beyond all reasonable doubt.

[107] The learned judge in the aforesaid case further held that a *prima facie* case of contempt is satisfied if the statement and verifying affidavit show that the respondent in question has committed a specie of contempt of court and the contents of the verifying affidavit should not be inherently improbable (see also *Dewan Perniagaan Melayu Malaysia Negeri Johor v. Menteri Besar Johor & Ors* [2016] 1 CLJ 52; [2016] 7 MLJ 1 (HC)].

[108] With respect, this court is of the view that both aforesaid cases are distinguishable because it involves civil contempt unlike in the instant case. Criminal contempt requires a higher standard of proof ie, the standard of beyond reasonable doubt. This view is substantiated by applying the principles laid down in the case of *Tan Sri Dato' (Dr) Rozali Ismail* (*supra*) and further applied in *Tan Sri G Darshan Singh v. Tetuan Azam Lim & Pang* (*supra*) which the Court of Appeal through Abdul Wahab Patail JCA at p. 1068 (CLJ); p. 548 (MLJ) held as follows:

> [13] It has been held by the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458 (FC) **that it is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor**. Premised upon that, the law has provided procedural safeguards before a party is labelled as an alleged contemnor and committal proceedings allowed to be begun against him. Firstly, even though it is obtained *ex parte*, the law nevertheless required leave to be obtained to commence committal proceedings. Secondly, strict compliance is required. **Thirdly, be it a civil or a criminal contempt, the standard of proof required is proof beyond reasonable doubt**.
>
> (emphasis added)

[109] This court finds that the learned coroner has applied the lower burden ie, on the balance of probabilities in granting the said leave to the respondent/applicant to initiate the committal proceedings against the appellant. This is reflected in the learned coroner's judgment at p. 41 of the ROA Vol. 1 when she decided as follows:

> Oleh itu, atas imbangan kebarangkalian saya memutuskan bahawa pemohon telah menunjukkan secara *prima facie* bahawa AG telah melakukan penghinaan terhadap mahkamah ini. Dengan itu, saya membenarkan pemohon untuk memulakan prosiding penghinaan terhadap AG sebagaimana yang dipohon di dalam enclosure 62 ini.

[110] This court is of the view that the learned coroner has misdirected herself on the standard of proof in granting leave for criminal committal proceedings. Be that as it may, even if the lower burden was erroneously applied by the learned coroner, this court still finds that the respondent/applicant has not discharged the said burden to the satisfaction of this court that warrants the granting of the said leave.

[111] On the facts and circumstances of the instant case, this court is of the view that there was no *prima facie* act of contempt on the part of the appellant. Therefore, this court opines that the said leave which was granted by the learned coroner to the respondent/applicant pursuant to O. 52 r. 3 of the ROC 2012 is unsubstantiated and devoid of any merit.

Conclusion

[112] In conclusion and premised on the abovesaid reasons, this court is of the view that the appellant's appeal has merits and therefore is allowed.

[113] Accordingly, the leave granted by the learned coroner to the respondent/applicant on 27 August 2019 for the committal proceedings against the appellant is hereby set aside.

[114] This court takes this opportunity to thank learned counsels for the submissions and authorities put forth before this court and acknowledges the esteemed presence of the learned Senior Counsels from both the appellant and the respondent/applicant.